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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

THE PEOPLE, Plaintiff and Respondent, v. SUZANNA SAVEDRA YOUNGBLOOD, Defendant and Appellant.	C033929 (Super. Ct. No. 626459)

APPEAL from a judgment of the Superior Court of Placer County. James D. Garbolino, Judge. Affirmed.

S. Lynne Klein, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Robert R. Anderson, Senior Assistant Attorney General, Ward A. Campbell, Supervising Deputy Attorney General, Jean M. Marinovich, Deputy Attorney General, for Plaintiff and Appellant.

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* Pursuant to California Rules of Court, rule 976.1, this opinion is certified for publication with the exception of parts II, III, V, VI, VII, and VIII.

The defendant accumulated 92 cats and kept them in a 7 1/2-foot by 11-foot trailer, providing less than one square foot for each cat. Convicted by jury of felony animal cruelty and placed on probation, she appeals. She asserts the trial was tainted by instructional error, due process violations, and evidence that should have been suppressed. We affirm.

PROCEDURE

The defendant was charged by information with seven counts of animal cruelty in violation of Penal Code section 597, subdivision (b). Count one alleged cruelty to all 92 of the cats, while counts two through seven alleged cruelty to one specified cat each. The jury found the defendant guilty of count one but not guilty of counts two through seven. The court placed the defendant on five years of formal probation with a condition that she serve 92 days in county jail. The court also ordered her not to possess or care for any cat or dog, except for a cat named Holly Angel.

FACTS

On December 31, 1998, Officer Robert Carter of Placer County Animal Control responded to a complaint that an excessive number of cats were being kept under poor health and living conditions in a small trailer. Officer Carter went to the property and saw a residence with a small trailer near the garage. He smelled a strong odor of ammonia, which he associated with animal urine, when he left his truck and started toward the residence. Terrance Deveany, the owner of the property, responded when Officer Carter knocked on the door.

Deveany told Officer Carter the trailer belonged to the defendant.

Officer Carter approached the trailer and looked inside through the windows. He saw at least 35 cats in the trailer. At various places in the trailer, he saw fecal matter and urine. Many of the cats were sneezing and had eye discharge. Officer Carter telephoned the on-call magistrate and obtained a search warrant for the trailer. The officer then called for a tow truck. As they were hooking up the trailer to the tow truck, the defendant arrived at the property. She stated she was taking care of the cats and believed there were between 80 and 90 in the trailer. She tried to give Officer Carter a vial with medicine for the cats, but he would not accept it because it was not adequately marked. The trailer was towed to the DeWitt Center so it could be placed in a building before being opened to prevent loss of control of the cats.

When the trailer was first opened at the DeWitt Center, Officer Carter entered with a video camera and recorded the conditions inside the trailer. The videotape was played for the jury.

The cats, 92 in all, were removed from the trailer and assigned numbers for identification. Most of the cats appeared unhealthy. They were examined and treated by a veterinarian. Her initial summary of the condition of the cats is as follows: "Most of the cats were covered in urine and feces. There [were] many that were malnourished, emaciated. Cats were sick with upper respiratory, herpes virus. They had ear mites, fleas.

There [were] cats with neurologic[al] problems. There [were] cats that were missing portions of their limbs or had deformed limbs. There [were] cats with urine scald, and there [were] cats that were either blind or partially blind in one or both eyes and cats that were missing eyes, too." The veterinarian also described other ailments suffered by the cats. Many of the problems described by the veterinarian, such as dehydration, chronic malnourishment, anorexia, urine scald, and severe infection, occur as a result of inadequate care over a long period.

The defendant testified. She lived in Sacramento County. In October 1998, she put the cats, about 35 to 40 at the time, in the trailer and moved them to the Deveany property in Placer County because Sacramento Animal Control officials told her she could not have more than four cats. She lived with the cats at first, either in the trailer or in a tent next to the trailer, feeding the cats and cleaning up after them. She brought additional stray cats from the Sacramento County neighborhood to the trailer. Eventually, she moved back to Sacramento County and visited the trailer to care for the cats. During the last two weeks before animal control seized the trailer, the defendant was sick and did not visit the cats as often. She contended that the messy conditions inside the trailer were a result of the removal of the trailer to the DeWitt Center. She knew she had too many cats, but she asserted she was trying to save their lives.

DISCUSSION

I

Instruction Concerning Elements of Animal Cruelty

Concerning the charge of animal cruelty (Pen. Code, § 597, subd. (b)), the trial court instructed the jury as follows: "Every person who causes an animal to be deprived of necessary sustenance, drink or shelter or who having care or custody of an animal subjects the animal to needless suffering or fails to provide the animal with proper food, drink, [or] shelter in a criminally negligent manner is guilty of cruelty to an animal." And later: "In order to prove such a crime each of the following elements must be proved: One, that a person has custody or is responsible for providing care to an animal; two, that person either (a) deprived or caused an animal to be deprived of necessary sustenance, drink or shelter, or (b) subjected an animal to needless suffering in a criminally negligent manner, and (c) that act or omission caused danger to an animal's life." These instructions allowed the jury to find the defendant guilty of animal cruelty for committing either of the listed acts: (1) depriving the cats of necessary sustenance, drink, or shelter or (2) subjecting the cats to needless suffering.

The defendant asserts the trial court erred in instructing the jury concerning the elements of animal cruelty. She contends the trial court did not properly apply the use of the

word “and” in the statute. We conclude the trial court correctly interpreted the statute.

Subdivision (b) of Penal Code section 597 provides: “Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; ***and*** whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a crime punishable as a misdemeanor or as a felony or alternatively punishable as a misdemeanor or a felony and by a fine of not more than twenty thousand dollars ($ 20,000).” (Italics and boldface added.)

The defendant asserts the boldface, italicized “and” in the middle of the long subdivision must be interpreted to require the prosecution, in order to obtain a conviction for animal cruelty, to prove the defendant committed one of the acts listed before the “and” as well as one of the acts listed after the

"and." For example, if the prosecution established that the defendant deprived the cats of necessary sustenance, which is one of the acts listed before the "and," it would also have to establish that the defendant subjected the animal to needless suffering or committed one of the other acts listed after the "and" in order to obtain a conviction for violation of Penal Code section 597, subdivision (b). In support of her argument, the defendant states simply that the use of the conjunctive in a statute requires proof of both elements. She makes no effort, however, to further analyze the actual language of Penal Code section 597, subdivision (b). The defendant's argument fails when the grammatical structure of the long, complex subdivision is carefully considered.

In all material respects, the language in subdivision (b) of Penal Code section 597 was enacted in 1905. The part of the statute ("and whoever, . . .") upon which the defendant relies to support her argument remains the same from that early date. (See Stats. 1905, ch. 519 (DXIX), p. 679, § 1.)

The use of the word "whoever" is dispositive. "Whoever" means "whatever person," "any person at all that," or "no matter who." (Webster's 3d New Internat. Dict. (1969) p. 2611.) In the structure of this statute, "whoever" is a subject, as is the phrase "every person" at the beginning of the statute. If the Legislature had meant to require proof of an act listed before "and" and an act listed after "and," it would not have used a new subject. Instead, it would have used the word "who," which would have referred back to the subject ("every person") at the

beginning of the sentence or it would have left that position in the sentence blank.

We must interpret a statute consistently with the meaning derived from its grammatical structure. (See *Horwich v. Superior Court* (1999) 21 Cal.4th 272, 280.) By using the word "whoever" as a second subject in the sentence, the Legislature, effectively, listed two separate ways (each with a list of acts) to find a defendant guilty of animal cruelty. That the two lists are joined by the conjunctive "and" does not convey the meaning attributed to the statute by the defendant. Written in 1905, the statute may be said to include literary flair in the place of a bland numbered list, the likes of which we have come to expect and prefer in contemporary discourse. (See, e.g., Pen. Code, § 1192.7, subd. (c) [listing dozens of "serious felonies"].) We conclude the trial court interpreted the statute correctly and properly instructed the jury it could find the defendant guilty of animal cruelty for either (1) depriving the cats of necessary sustenance, drink, or shelter or (2) subjecting the cats to needless suffering.

II

Notice to Defendant of Theory of Liability

As to count one, on which the defendant was convicted, the information alleged: "[Animal cruelty] was committed by [the defendant], who did willfully, unlawfully cause numerous animals, to wit, 92 cats, to be deprived of necessary sustenance and drink, and having charge and custody of said animals, did

fail to provide those animals with proper food, drink or shelter, and did subject said animals to needless suffering."

The defendant contends the information failed to give her adequate notice of the charges against her because the alleged acts were joined by the conjunctive "and" while the instructions from the court allowed the jury to convict her after finding a single act. Specifically, she claims the information did not allege a theory based solely on subjecting the cats to needless suffering. This contention is without merit.

"'"Due process of law requires that an accused be advised of the charges against him in order that he may have a reasonable opportunity to prepare and present his defense and not be taken by surprise by evidence offered at his trial." [Citation.]' (*People v. West* (1970) 3 Cal.3d 595, 612 [citation].)" (*People v. Lohbauer* (1981) 29 Cal.3d 364, 368.) Contrary to the defendant's assertion, it is not only acceptable but preferred to allege acts in the conjunctive even though the statute is phrased in the disjunctive. "When a statute . . . lists several acts in the disjunctive, any one of which constitutes an offense, the complaint, in alleging more than one of such acts, should do so in the conjunctive to avoid uncertainty. [Citations.] Merely because the complaint is phrased in the conjunctive, however, does not prevent a trier of fact from convicting a defendant if the evidence proves only one of the alleged acts. [Citation.]" (*In re Bushman* (1970) 1 Cal.3d 767, 775, overruled on other grounds in *People v. Lent*

(1975) 15 Cal.3d 481, 486, fn. 1.) Therefore, the information gave the defendant adequate notice of the charges against her.

In her reply brief, the defendant changes her argument. Instead of supporting the argument in her opening brief that the jury was permitted to convict her based solely on a finding she caused the cats needless suffering while the information stated the different acts in the conjunctive, she reverts to her argument that Penal Code section 597, subdivision (b) requires proof of more than one act because it is phrased in the conjunctive. As noted above, we reject this argument. Furthermore, it does not logically support her argument in the opening brief that the information did not give her adequate notice because it was phrased in the conjunctive.

III

Sanctions for Destruction of Evidence

The defendant asserts the prosecution failed to preserve potentially exculpatory evidence and that the trial court erred by failing to impose sanctions for this conduct. We disagree.

"Law enforcement agencies have a duty, under the due process clause of the Fourteenth Amendment, to preserve evidence 'that might be expected to play a significant role in the suspect's defense.' (*California v. Trombetta* (1984) 467 U.S. 479, 488 [104 S.Ct. 2528, 2534, 81 L.Ed.2d 413]; accord, *People v. Beeler* (1995) 9 Cal.4th 953, 976 [39 Cal.Rptr.2d 607, 891 P.2d 153].) To fall within the scope of this duty, the evidence 'must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the

defendant would be unable to obtain comparable evidence by other reasonably available means.' (*California v. Trombetta, supra,* 467 U.S. at p. 489 [104 S.Ct. at p. 2534]; *People v. Beeler, supra,* 9 Cal.4th at p. 976.) The state's responsibility is further limited when the defendant's challenge is to 'the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant.' (*Arizona v. Youngblood* (1988) 488 U.S. 51, 57 [109 S.Ct. 333, 337, 102 L.Ed.2d 281].) In such case, 'unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law.' (*Id.* at p. 58 [109 S.Ct. at p. 337]; accord, *People v. Beeler, supra,* 9 Cal.4th at p. 976.) [¶] On review, we must determine whether, viewing the evidence in the light most favorable to the superior court's finding, there was substantial evidence to support its ruling. (*People v. Griffin* (1988) 46 Cal.3d 1011, 1022 [251 Cal.Rptr. 643, 761 P.2d 103].)" (*People v. Roybal* (1998) 19 Cal.4th 481, 509-510.)

Before trial, the defendant, citing *California v. Trombetta, supra,* 467 U.S. 479, moved to dismiss because of loss or destruction of evidence. The motion was based on testimony given at the preliminary hearing. The defendant's assertion of failure to preserve evidence focused on three different aspects of the investigation. She claimed the officers improperly (1) encouraged her to discard trash from around the trailer, (2)

failed to film the inside of the trailer before moving it, and (3) failed to preserve evidence concerning the number of feed and water bowls in the trailer. In the alternative, the defendant asked that the videotape be excluded or that the jury be given a cautionary instruction. She also requested that the court instruct the jury that, if it found the prosecution willfully suppressed evidence, it could infer the prosecution recognized the strength of the defendant's case or the weakness of its own. (See CALJIC No. 2.06.) During the trial, the defendant objected to admission of the videotape made after the trailer was moved to the DeWitt Center. The trial court denied the motion to dismiss, allowed the prosecution to present the videotape to the jury, and refused to instruct the jury concerning willful suppression of evidence. On appeal, the defendant, focusing on the same three aspects of the investigation, contends the trial court erred by not granting her motion to dismiss or, in the alternative, to exclude the videotape or give the jury a cautionary instruction.

Animal Control Officer Robert Carter testified at the preliminary hearing that he responded to the Deveany property in Placer County because someone had observed a number of cats being housed in a trailer on that property. Immediately after he stepped out of his vehicle, he smelled a strong ammonia odor, which he associated with animal urine. He contacted Deveany, the owner of the residence, who told him the trailer, located about 60 to 80 feet from the residence, belonged to the defendant. Deveany also told him the defendant had a written

agreement with him to have the trailer on the property. Officer Carter approached the trailer, which was 7 1/2 feet by 11 feet and looked in through the windows. He saw many cats inside, more than 35. There was fecal matter in many places inside of the trailer, including on the cats. Some of the cats were sneezing and others appeared to be thin or lethargic.

Officer Carter observed trash bags around the trailer, although he did not look inside them. The trailer was not opened by the officers on the Deveany property. Instead, it was towed to the DeWitt Center, a distance of less than 10 miles, going between 10 and 25 miles per hour. Although the roads were somewhat bumpy, the driver of the tow truck observed a cat sitting on a box next to the front window the entire ride. Officer Carter testified the only change that took place inside the trailer as a result of the move was that a couple of animal carriers shifted. The trailer was placed inside a building before the door of the trailer was opened because the officers were unsure what the cats would do. Officer Carter entered the trailer with a video camera and filmed the inside of the trailer. The fecal matter on the floor was an inch thick in places, probably a buildup of several weeks without cleaning. Eventually, he took the cats out of the trailer. To do so, he had to remove pans that were in his way. Also, there were food bags and some canned food in the trailer. These were not booked into evidence.

In denying the motion to dismiss or for other sanctions, the trial court ruled the evidence was not exculpatory. At most

it would show there was food, for example, in the bags, but not that the food was available to or fed to the cats. The court noted the officers did not deny the existence of the trash bags outside the trailer and the feed bowls inside the trailer. The court further found the officers did not intentionally destroy any evidence.

The defendant asserts Officer Carter saw trash bags next to the trailer and directed her to dispose of them. To the contrary, at the time of the pretrial motion there was no evidence before the court that animal control directed the defendant to dispose of the bags. At the preliminary hearing, Officer Carter stated he saw trash bags around the trailer but that he did not look inside them. There is no indication concerning what happened to those bags.

On appeal, the defendant asserts she demonstrated bad faith destruction of exculpatory evidence. We disagree. At most, the officers did not preserve some trash bags and some feed bowls. As the trial court noted, these, alone, were not exculpatory. The presence of trash and feed bags and feed and water bowls does not demonstrate the defendant was not guilty of animal cruelty. Furthermore, there was no indication the officers denied their existence. Accordingly, evidence could still be presented to the jury concerning the existence of this evidence. The officers did not fail to preserve evidence "that might be expected to play a significant role in the suspect's defense." (*California v. Trombetta, supra,* 467 U.S. at p. 488.)

The defendant asserts the officers "distorted the evidence by videotaping the trailer after the move. The evidence of the condition of the trailer and the cats at the time [the defendant] was caring for them is lost forever." We know of no authority, and the defendant presents none, that requires officers to videotape a crime scene, such as the inside of a movable vehicle, before it can be moved, or, for that matter, at all. Indeed, the testimony at the preliminary hearing was that the conditions inside the trailer existed prior to the move. While some minor shifting in contents appears to have taken place, it did not cause the conditions for which the defendant was convicted of animal cruelty: 92 cats in a small trailer, disease and malnutrition, weeks worth of feces and urine. In addition, because the officers did not intentionally destroy any evidence, there is no evidence they acted in bad faith. Such was the finding of the trial court. We conclude the trial court properly denied the defendant's *Trombetta* motion and refused to dismiss, give the cautionary instruction, or exclude the videotape.

IV

Instruction Concerning

Defense of Necessity

The defendant requested an instruction on the defense of necessity.[1] She claimed that she was keeping the cats to save

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[1] CALJIC No. 4.43 states:

them from euthanasia at animal control. The trial court rejected the instruction and denied the defendant's request that she be permitted to present argument to the jury on the defense. On appeal, the defendant asserts the trial court erred. We conclude that, under the facts of this case, the defense of necessity was not available.

"The defense of necessity is 'founded upon public policy and provides a justification distinct from the elements required to prove the crime. [Citation.] The situation presented to the defendant must be of an emergency nature, threatening physical harm, and lacking an alternative, legal course of action. [Citation.] The defense involves a determination that the harm

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"A person is not guilty of a crime when [he] [she] engages in an act, otherwise criminal, through necessity. The defendant has the burden of proving by a preponderance of the evidence all of the facts necessary to establish the elements of this defense, namely:

"1. The act charged as criminal was done to prevent a significant and imminent evil, namely, [a threat of bodily harm to oneself or another person] [or] [];

"2. There was no reasonable legal alternative to the commission of the act;

"3. The reasonably foreseeable harm likely to be caused by the act was not disproportionate to the harm avoided;

"4. The defendant entertained a good-faith belief that [his] [her] act was necessary to prevent the greater harm;

"5. That belief was objectively reasonable under all the circumstances; and

"6. The defendant did not substantially contribute to the creation of the emergency."

or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged. [Citation.] Necessity does not negate any element of the crime, but represents a public policy decision not to punish such an individual despite proof of the crime. [Citations.] [¶] An important factor of the necessity defense involves the balancing of the harm to be avoided as opposed to the costs of the criminal conduct. [Citation.]" (*In re Eichorn* (1998) 69 Cal.App.4th 382, 389.) "Necessity is an affirmative public policy defense, in effect a plea in avoidance and justification, which comes into focus only after all elements of the offense have been established." (*People v. Waters* (1985) 163 Cal.App.3d 935, 938.) When public policy considerations do not support a defense of necessity, the trial court need not instruct on that defense. (*People v. Kearns* (1997) 55 Cal.App.4th 1128, 1135.)

Since the defense of necessity is based on public policy, we must look to public policy to determine whether the defense was available to the defendant on the facts presented here. "[A]side from constitutional policy, the Legislature, and not the courts, is vested with the responsibility to declare the public policy of the state." (*Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 71.)

The duties of a facility that acts as a depositary of living animals are spelled out in the Civil Code. (See Civ. Code, § 1834 et seq.) "A depositary of living animals shall provide the animals with necessary and prompt veterinary care, nutrition, and shelter, and treat them kindly." (Civ. Code, §

1834.) The Legislature has expressly stated the public policy of this state concerning euthanasia of animals. (Civ. Code, § 1834.4.) If an animal is adoptable or, with reasonable efforts, could become adoptable, it should not be euthanized. (*Ibid*.; see also Food & Agr. Code, § 17005.) However, if an animal is abandoned and a new owner cannot be found, the facility "shall thereafter humanely destroy the animal so abandoned." (Civ. Code, § 1834.5.) Particularly relevant to this case and the defendant's assertions is a finding made by the Legislature in 1998: "The Legislature finds and declares that it is better to have public and private shelters pick up or take in animals than private citizens." (Stats. 1998, ch. 752, § 1.)

The Food and Agricultural Code provides specifically for what a shelter must do when a stray cat is impounded. (See Food & Agr. Code, § 31752.) The facility must hold the stray cat for owner redemption for a designated time, usually between four and six days. (Food & Agr. Code, § 31752, subd. (a).) Prior to the euthanasia of the cat, the facility, at the request of a nonprofit, animal rescue or adoption organization, must release the cat to the requesting organization. (Food & Agr. Code, § 31752, subd. (b).) During the holding period, the facility must scan the cat for a microchip that identifies the owner. (Food & Agr. Code, § 31752, subd. (c).) Concerning an animal seized by authorities, the Penal Code provides: "A veterinarian may humanely destroy an impounded animal without regard to the prescribed holding period when it has been determined that the animal has incurred severe injuries or is incurably crippled. A

veterinarian also may immediately humanely destroy an impounded animal afflicted with a serious contagious disease unless the owner or his or her agent immediately authorizes treatment of the animal by a veterinarian at the expense of the owner or agent." (Pen. Code, § 597.1, subd. (i).)

To utilize a term from preemption analysis, these statutes occupy the field of what to do with stray cats. The defendant is not at liberty to impose her own will over the public will. Her assertion that it was necessary for her to keep the cats instead of passing them on to animal control flies in the face of legitimately adopted public policy. Accordingly, since her proffered necessity defense is against public policy, the trial court properly denied her request for the necessity instruction and prohibited her from arguing the defense to the jury.[2]

V

Evidence Concerning Euthanasia

The defendant sought to present evidence concerning the practice of euthanasia at animal control. In response to a prosecution motion in limine to prohibit such evidence, the trial court ruled that evidence of euthanasia was not relevant to the issues involved in the case. Later, an animal control officer became emotional when describing how one of the cats

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[2] As did the trial court, the Attorney General notes that the necessity defense has been applied only to the prevention of harm to humans. Since we conclude the defendant's proffered defense was contrary to public policy, we need not decide whether it can be applied only to prevention of harm to humans.

found in the trailer later died. The defendant sought then to cross-examine him concerning euthanasia. Her request was denied.

On appeal, the defendant asserts the prohibition on evidence of euthanasia at animal control violated (1) her right to present a defense and (2) her right to cross-examine the animal control officer. Neither aspect of her assertion has merit.

The defendant's contention that the prohibition on evidence of euthanasia prevented her from presenting a defense is based on her argument in part IV that she should have been allowed to claim her treatment of the cats was justified by necessity. Since we have concluded the defense of necessity was not available to her as a matter of law, the prohibition on evidence of euthanasia did not violate her rights in this regard.

The defendant also argues: "Another unrelated reason why the court should have allowed [the defendant] to elicit information concerning the euthanasia policy was to conduct an effective cross-examination of Officer Carter [the animal control officer who became emotional when testifying concerning the death of a cat]. Officer Carter was the prosecution's key witness. Thus, the ability to challenge his credibility was crucial to [the defendant's] defense." Apparently, the defendant sought to show that the officer's emotions were contrived because he is involved in euthanizing animals and, therefore, the officer's testimony was less credible.

"Although a criminal defendant is constitutionally entitled to present all relevant evidence of significant probative value in his favor, this does not mean the court must allow an unlimited inquiry into collateral matters; the proffered evidence must have more than slight relevancy." (*People v. Marshall* (1996) 13 Cal.4th 799, 836.) We review a ruling excluding evidence only for abuse of discretion. (*People v. Williams* (1997) 16 Cal.4th 153, 197.)

Evidence of euthanasia to impeach the officer's credibility was so tangential to the issues legally involved in this case that we cannot say the trial court abused its discretion. The exclusion of evidence concerning euthanasia was well within the trial court's authority.

VI

Instruction Concerning

Intervening, Superseding Cause

The trial court instructed the jury concerning criminal negligence and causation as follows: "Criminal negligence means conduct which is more than ordinary negligence. Ordinary negligence is the failure to exercise ordinary or reasonable care. Criminal negligence refers to negligent acts which are aggravated, reckless or flagrant and which are such a departure [from] what would be the conduct of an ordinary prudent person, careful person under the same circumstances as to be contrary to a proper regard for danger to animal life and health or to constitute indifference to animal life and health or to constitute indifference to the consequences of those acts. The

facts must be such that the consequences of the negligent acts could reasonably have been foreseen and it must appear that danger to animal life and health was not the result of inattention, mistaken judgment or misadventure but the natural and probable result of an aggravated, reckless or flagrantly negligent act."

The defendant requested the trial court to give the following, additional instruction concerning causation: "Evidence has been presented from which you may find that the defendant's act was a cause of the [death][injury] but that the immediate cause of the [death][injury] was the negligent conduct of another person. You may not convict the defendant based on such a finding unless you also find that when the defendant committed the act which was a cause of the [death][injury] the intervening negligence of the other person would have been reasonably foreseeable to a reasonable person in the same position as the defendant. [¶] If you have a reasonable doubt whether the intervening negligence would have been reasonably foreseeable to a reasonable person in the same position as the defendant you must give the defendant the benefit of that doubt and find [him][her] not guilty."

The defendant contends the refusal to give her requested instruction was reversible error because one of the theories of her defense was that the conduct of animal control in moving the trailer caused some of the harm to the cats. She argues: "Assuming arguendo that [the defendant] was negligent in caring for the cats, the conduct of animal control in moving the

trailer with the cats inside was a superseding cause which exonerated [the defendant] from culpability."

A superseding cause is "an unforeseeable intervening cause, an extraordinary and abnormal occurrence, which rises to the level of [exoneration] . . . ." (*People v. Armitage* (1987) 194 Cal.App.3d 405, 420-421.) Normally, the law of superseding cause is applied when an element of the crime is death or injury to the victim. (See, e.g., *People v. Harris* (1975) 52 Cal.App.3d 419, 426-427.) In *Harris*, the defendant was convicted of vehicular manslaughter after a high-speed chase because, even though his vehicle did not hit the victim, a victim was killed in a collision involving a pursuing police officer. (*Id.* at pp. 422-423.) The negligence of the pursuing officer was found not to be a superseding cause. (*Id.* at pp. 426-427.) Here, however, the injury to the animal is not an element of the offense. Instead, the offense is shown by acts which cause danger to an animal's life. Neither the instructions nor the arguments of counsel sought to hold the defendant responsible for danger incurred in the transportation of the cats.

As the prosecutor argued to the jury, the issues to be resolved in this case, in which the defendant admitted keeping 92 cats in her care, were whether she provided adequate food, water, and shelter for the cats and subjected them to needless suffering and whether her failure to provide proper care caused danger to the cats' health. There was no evidence that the cats' health problems, including urine scald, ear mites,

malnutrition, herpes, upper respiratory infections, and other ailments occurred as a result of the move. Obviously, there was also no evidence the move caused the presence of 92 cats in the trailer, with space for less than one square foot each. Those were long-term problems caused by the criminal negligence of the defendant. As noted in the proposed instruction, a third person's negligence can be a superseding cause only if it actually caused the injury. (See *People v. Armitage, supra,* 194 Cal.App.3d at pp. 420-421.)

Even if the moving of the trailer caused a change in the appearance of the inside of the trailer -- such as spilled food or water -- the defendant was still properly held liable for the long-term neglect and abuse of the cats. As a matter of law, the moving of the trailer was not a superseding cause potentially exonerating the defendant of culpability. Accordingly, the evidence did not support an instruction on superseding cause, and the trial court did not err in rejecting the proposed instruction.

VII

Search of Trailer

The defendant moved in the superior court to exclude evidence pursuant to Penal Code section 1538.5. Animal Control Officer Robert Carter testified at the hearing.[3]

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[3] We note this is our third recitation of Officer Carter's activities at the Deveany property. Nonetheless, it is necessary because the "Facts" section presents evidence from trial, part III concerning sanctions for destruction of evidence

Officer Carter went to the Deveany property in Placer County in response to a report that there was a trailer on the property with many cats inside and excessive odors emanating from it. As he approached, he observed a trailer in front of a garage to the left of a house. When he exited his vehicle, he smelled an ammonia odor associated with urine. He went to the front door of the residence and made contact with Deveany, who stated the trailer belonged to the defendant but that she did not live there. Deveany also told Officer Carter he had a written agreement with the defendant allowing her to use the property. Deveany believed there were 18 cats in the trailer.

While Officer Carter and Deveany conversed, they walked to the front of the garage. From there, Officer Carter could see cats inside the trailer. He approached the trailer, within about a foot, and looked in through a rear corner window, which was close to the garage. He saw multiple cats and what appeared to be fecal matter on the cushions. He counted 35 cats before losing count because of the cats' movement. Moving around the trailer, Officer Carter looked in three different windows. Some of the cats he saw had discharge around the nasal and eye area and several were sneezing, which he took to be a sign of illness. After making these observations, he telephoned the on-call magistrate to get a search warrant.

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involves testimony from the preliminary hearing, and the recitation in this section concerning the search of the trailer is taken from the Penal Code section 1538.5 hearing.

By telephone, Officer Carter testified concerning his observations at the Deveany property. Deveany told him the defendant owned the trailer and kept it on the property pursuant to an agreement. He stated he looked into the trailer and saw 35 to 40 cats with fecal matter and urine in various locations. The cats did not appear to be in good health, with some showing signs of respiratory problems. Based on Officer Carter's observations and training, he believed the conditions were a violation of Penal Code section 597, subdivision (b) and requested authority to search the trailer and to identify and treat the cats.

The magistrate found probable cause to search the trailer and orally gave Officer Carter authority to search the trailer for "indicia of ownership and also for the purposes of eliminating . . . the health hazard and attending the animals that might still be in the trailer . . . ." The warrant issued by the magistrate provided for a search of the trailer and seizure of indicia of ownership, evidence of animal cruelty, and cats. Even though the warrant contained a space for indicating that the evidence presented to the magistrate "tends to show that a felony has been committed or that a particular person has committed a felony," the magistrate did not put an "x" on the line before that statement. As noted in the facts above, Officer Carter moved the trailer to the DeWitt Center before conducting the search of the inside.

In her motion to suppress, the defendant asserted the evidence obtained by Officer Carter should be excluded because

(1) he searched the trailer by looking into the windows prior to obtaining the warrant, (2) there was no probable cause to issue the warrant, and (3) removal of the trailer to the DeWitt Center exceeded the scope of the warrant. The trial court denied the motion to suppress. The defendant raises the same issues on appeal.

Looking in the Windows

The defendant contends Officer Carter violated the Fourth Amendment when he approached the trailer and looked in the windows. She implies that the trailer is entitled to the same protections as a home and asserts she had a reasonable expectation of privacy in the area around the trailer. We disagree.

"The Fourth Amendment provides '[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . .' (U.S. Const., 4th Amend.) This guarantee has been incorporated into the Fourteenth Amendment to the federal Constitution and is applicable to the states. [Citation.]" (*People v. Camacho* (2000) 23 Cal.4th 824, 829-830.) Because Officer Carter did not have a warrant when he looked into the windows of the trailer, "the People bore the burden of establishing either that no search occurred, or that the search undertaken by [Officer Carter] was justified by some exception to the warrant requirement. [Citations.]" (*Id*. at p. 830.) The trial court concluded Officer Carter's conduct did not constitute a search.

A private residence is a place in which an "'individual normally expects privacy free of governmental intrusion not authorized by a warrant . . . .' [Citation.]" (*People v. Camacho, supra*, 23 Cal.4th at p. 831.) Even so, an officer's observations of activities within a residence do not constitute a search and thus do not violate the Fourth Amendment if the officer is in a place he otherwise has the right to be when the observation is made. (*Id*. at pp. 831-832.)

In *Camacho*, the officers went into the side yard of a residence to look inside. They observed the defendant packaging cocaine. (23 Cal.4th at pp. 828-829.) The Supreme Court concluded: "When [the officers] peered into defendant's home through his window, they were standing in a place to which neither they nor the public had been invited, and no other circumstances authorized their entry into defendant's yard. Accordingly, defendant retained a reasonable expectation of privacy over his activities, the officers' observation of him was a search within the meaning of the Fourth Amendment, and respondent asserts no satisfactory justification for their dispensing with a warrant." (*Id*. at p. 837.) The court, however, added this guidance: "[I]f the facts were different, perhaps only slightly so, we might conclude the officers were entitled to enter defendant's yard, thereby validating the lawfulness of their observations of defendant through his bedroom window. The lateness of the hour, the relative lack of seriousness of the phoned-in complaint, the failure first to knock on defendant's front door, all are relevant to evaluating

the reasonableness of the officers' conduct in this case. We cannot say, however, that the officers, having arrived at defendant's house close to midnight in response to an anonymous complaint of a loud party and perceiving nothing amiss, were entitled to enter defendant's private property without a warrant and look through his windows. To the contrary, we find defendant's expectation that no one would be in his side yard so late at night was a reasonable one." (*Id*. at pp. 837-838.)

Here, we conclude the trial court properly concluded Officer Carter's conduct of approaching the trailer and looking inside through the windows was not a search under the Fourth Amendment because the facts known to Officer Carter at the time would not lead one to believe the trailer was a residence.

The defendant would have us believe that, because a trailer can be used as a residence and she had an agreement with Deveany to keep the trailer on his property, the trailer was a residence for the purpose of applying the Fourth Amendment. Although she does not directly make this contention, it is a necessary premise for her argument that Officer Carter was within the curtilage of her trailer in violation of the Fourth Amendment. The cases cited by the defendant for her argument that she had a reasonable expectation of privacy in the area surrounding the trailer do not support a conclusion her trailer should be treated as a residence. (See, e.g., *Oliver v. United States* (1984) 466 U.S. 170 [80 L.Ed.2d 214] (evidence found in open field on property not suppressed because no reasonable expectation of privacy); *Lorenzana v. Superior Court* (1973) 9

Cal.3d 626 (evidence suppressed where officer entered area not open to public to look into residence).)

While it appears from the evidence presented in the hearing on the motion to suppress that Officer Carter knew the trailer belonged to the defendant and that she had an agreement with Deveany to keep the trailer on his property, he also knew she did not use the trailer as a residence. Deveany told Officer Carter that the defendant did not live there. Accordingly, the trailer was nothing more than the defendant's personal property which she kept on Deveany's real property. That it was capable of use as a home does not lead to the conclusion that Officer Carter was required to treat it as a residence. (See *California v. Carney* (1985) 471 U.S. 386, 393-394 [85 L.Ed.2d 406, 414-415].)

Probable Cause for Warrant

The defendant argues: "Once the affidavit by Officer Carter [actually the telephonic testimony] is redacted of all his unlawful observations, there is no information left to support probable cause." Because we conclude Officer Carter's observations did not constitute an unlawful search, the defendant's argument there was insufficient probable cause to support the warrant is without merit.

Removal of Trailer

The defendant asserts the evidence obtained from the trailer should have been suppressed because the warrant did not authorize removal of the trailer. (See *Jauregui* v. *Superior Court* (1986) 179 Cal.App.3d 1160, 1167.) To the contrary, the

warrant authorized seizure of "evidence of animal cruelty," along with indicia of ownership and the cats. The trailer, itself, was evidence of animal cruelty because the cats, 92 of them, were kept inside and the condition of the inside of the trailer constituted evidence of the cruelty. Accordingly, this assertion is without merit because the seizure and removal of the trailer did not exceed the authority of the warrant.

VIII

Allegation of Cumulative Error

The defendant argues that, even if the alleged errors are not prejudicial alone, they cumulatively require reversal. Since we have found no error, we need not consider this contention further.

DISPOSITION

The judgment is affirmed. (*CERTIFIED FOR PARTIAL PUBLICATION.*)

NICHOLSON, J.

We concur:

SCOTLAND, P.J.

SIMS, J.